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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

April 11, 2001
AO-01-04

Gerald F. Moore, Esq.
212 Central Street
Lowell, MA 01852

Re: The Application of the Campaign Finance Law to a Lawyer Representing a Public Entity

Dear Mr. Moore:

This letter is in response to your April 3, 2000 request for an advisory opinion regarding the application of M.G.L. c. 55, § 13 to you, an attorney who represents the Lowell Housing Authority (“LHA”), a governmental agency created pursuant to M.G.L. c. 121B.

As the sole attorney employed by the Law Offices of Gerald F. Moore, a professional corporation located at 212 Central Street in Lowell, Massachusetts, you indicate that you perform numerous and varied legal services for a variety of clients in addition to the LHA. Most of your clients are individuals, businesses, and other entities that have no affiliation with state, county, or municipal government. However, a small portion of your firm’s business involves providing legal services to the LHA.

The LHA does not supervise employees of your firm or provide employee benefits. The LHA has not provided you with an office or office supplies. Your firm performs services to the LHA “as needed,” including secretarial support and research, and you bill the LHA on an hourly basis. You state that, for the last ten years, your firm’s work for the LHA has constituted substantially less than half of your total annual business.

In conjunction with your representation of LHA, you state that you alone are responsible for making legal decisions concerning the manner in which legal services are rendered and litigation conducted. Your firm works on LHA matters according to your schedule during firm hours, and not on terms set by any contract with LHA. The firm does not purport to be a LHA employee. Rather, the firm’s name and address appear on all court documents. Finally, no communication goes to or from the firm through the LHA.

You are seeking advice as to whether your representation of LHA would prevent you from soliciting and receiving political contributions or serving as the treasurer in any committee formed on behalf of a candidate for the General Court.

QUESTION

Do the restrictions of § 13 of the campaign finance law apply to a sole member of a law firm who represents a public entity under the circumstances described above?

ANSWER

No.

DISCUSSION

The campaign finance law prohibits public employees from directly or indirectly soliciting or receiving campaign funds on behalf of a candidate, political committee or for any other political purpose. See M.G.L. c.55, § 13. This prohibition applies to any individual “employed for compensation” by a government entity. See IB-92-01.

In AO-91-03, this office suggested that a sole practicing attorney might, under some circumstances, be deemed a public employee for the purpose of § 13. However, you are engaged in the private practice of law for a professional corporation and the majority of your clients are non-governmental. You provide your own office space, equipment, supplies, and personnel, and bill the LHA on an hourly basis for work performed “as needed.” Based on these facts and the representations made in your letter, it appears that you are an independent contractor, rather than an employee of the LHA, even though you are the only attorney in your firm. See AO-88-19.

This office has consistently advised that § 13 of the campaign finance law does not apply to independent contractors. See AO-98-05. Consequently, you may solicit and receive political contributions and serve as the treasurer of a committee formed to support a General Court candidate despite your representation of the LHA.

Please note that this opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director